

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1228 OF 2022**

**DISTRICT : SOLAPUR**

**SUB : COMPASSIONATE APPOINTMENT**

Shri Shubham Laxman Shinde, )  
Age 26 years, Occ. Nil. )  
Both residing at A/P Kumbej, Tal. )  
Karmala, Dist. Solapur. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Home Department, O/at Madam )  
Cama Road, opp. Mantralaya, )  
Mumbai 400 032. )
2. The Superintendent of Police, )  
Solapur (R), Solapur. ) ...**Respondents**

**Shri A. V. Bandiwadekar, Advocate for Applicants.**

**Mr. A.J. Chougule Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 15.06.2023.**

**JUDGMENT**

1. The Applicant has challenged communication dated 07.09.2022 issued by Respondent No.1 – Government thereby rejecting his claim for substitution of his name in place of his mother in waiting list for compassionate appointment invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to O.A. are as follows :-

The Applicant's father Laxman Shinde was Police Naik on the establishment of Respondent No.2 -Superintendent of Police and died in harness on 25.02.2008 leaving behind widow Smt. Sunita, son - Shubham (Applicant) and daughter. At the time of death of deceased Government servant, the son and daughter both were minor. After the death of husband, Smt. Sunita made an application for compassionate appointment on 28.04.2008 for compassionate appointment on the ground that after the death of husband, there is no earning member in the family. Accordingly, her name was taken in the waiting list. However, no such compassionate appointment was provided as required to be provided expeditiously even by creating supernumerary post so that distress family should get financial assistance. Thereafter, Smt. Sunita made an application on 20.02.2010 to take the name of her son - Shubham in the waiting list in her place stating that she is not keeping good health. She again made representation on 17.02.2011. However, nothing was communicated to her. In the meantime, Smt. Sunita attained 45 years of age on 22.04.2014. Therefore, her name was deleted from the waiting list in terms of scheme. The Respondent No.2 by communication dated 20.06.2015 accordingly communicated it to Smt. Sunita. Thereafter, Smt. Sunita again made an application on 03.08.2015 to the Government for providing appointment to her son Shubham (present applicant). On that application, the Government called report from the Respondent No.2. In turn, the Respondent No.2 submitted report to the Government that her name is already deleted on attaining 45 years of age. In report, the Respondent No.2 admitted that Applicant Smt. Sunita had earlier made an application for substitution of name of his son in her place. Thereafter nothing happened for 5-6 years. Ultimately, the Government by order dated 07.09.2022 rejected the claim for substitution on the ground that in the scheme, there is no provision for substitution of heir.

3. It is on the above background, the Applicant has challenged communication dated 07.09.2022 in the present O.A.

4. Heard Shri A. V. Bandiwadekar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

5. Shri A. V. Bandiwadekar, learned Counsel for the Applicant submits that Smt. Sunita had applied for substitution much before deletion of her name from the waiting list and it ought to have been considered by the Respondents. He further submits that the reason mentioned by the Respondents in impugned order that in scheme substitution is not permissible is already struck down by the Hon'ble High Court in ***W.P.No.6267 of 2018 (Dnyaneshwar Ramkishan Musane V/s State of Maharashtra & Ors.)***, decided on 11.03.2020. He further referred to the decision rendered by M.A.T. bench Nagpur in ***O.A.No.464 of 2022 (Yashkumar P. Adole & Anr. V/s State of Maharashtra & Ors.)***, dated 02.01.2023 allowing the O.A. in similar situation on the basis of the decision of the Hon'ble High Court in ***Dnyaneshwar Musane's*** case. On this line of submission, he submits that impugned communication dated 07.09.2022 is bad in law and liable to be quashed.

6. Per contra, Shri A. J. Chougule, learned P.O. submits that in the scheme for compassionate appointment, there is no provision for substitution of heir and therefore, impugned communication cannot be faulted with. He has further pointed out that the Applicant attained majority in 2014 but applied for first time for himself on 04.07.2022 and it suggests that there was no such necessity of compassionate appointment. He further submits that Smt. Sunita had not challenged the order dated 20.06.2015 whereby her name was deleted.

7. In view of submissions, the issue posed for consideration is whether impugned communication dated 07.09.2022 is legal and valid.

8. The fact as narrated above are not in dispute.

9. Shri Laxman Shinde (father of the Applicant) died on 25.02.2008 leaving behind widow- Sunita, Son and daughter who were minor. Admittedly, Smt. Sunita applied within one year from the death of deceased Government servant and her name was taken in the waiting list. Notably, it is before crossing the age of 45 years, she made an application on 20.02.2010 and 17.02.2011 for substituting name of her son in her place. True that time, the Applicant was minor and he attained majority in 2014. However, the fact remains that even before crossing 45 years of age, she had applied for substitution of name of Applicant in her place. This being so, the applications made by mother on behalf of son ought to have been considered along with application made by the Applicant himself on 04.07.2022 after attaining majority. However, it is rejected solely on the ground that as per G.R. dated 21.09.2017, there is higher limit of 45 years age for compassionate appointment and after 45 years of age, the name of heir is required to be deleted as per, Clause 11(aa) of G.R. dated 21.09.2017. The G. R. Dated 21.09.2017 is compilation of all earlier G.R. and stipulation of prohibition against substitution is in G.R. dated 20.05.2015 which is reproduced in consolidated G.R. dated 21.09.2017.

10. However, here material question is when Smt. Sunita much before crossing 45 years of age applied for substitution of name of her son whether in such situation request made by son for substitution can be rejected.

11. Needless to mention that the scheme of appointment on compassionate ground has been framed to alleviate the difficulties of distressed family by providing appointment on compassionate ground to

the family of deceased so as to mitigate hardship caused due to death of sole bread earner of the family. This being the position, the executive is expected to adopt compassionate and justice oriented approach so as to advance the aim and object of the scheme.

12. Indeed, as regard the aim and object of this scheme for appointment on compassionate ground, it would be useful to refer the observations made by Hon'ble Supreme Court in **AIR 1989 SC 1976 (Smt. Sushma Gosain & Ors. Vs. Union of India)** wherein in Para No.9, it has been held as follows :

*“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.*

13. As such, such compassionate appointment ought to be provided immediately to redeem the family in distress and it would be highly unjust and unfair to keep the matter pending and then to delete the name of heir on attaining the age of 45 years. The Hon'ble Supreme Court has emphasized that if there is no suitable post for appointment then supernumerary post should be created to accommodate the heir of deceased Government servant.

14. Indeed, restriction about substitution mentioned in G.R. dated 20.05.2015 was subject matter before the Hon'ble High Court in **Dnyaneshwar Musane's** case. In that case, mother whose name was on waiting list applied for substitution but it was rejected in view of restriction imposed in G.R. dated 20.05.2015. However, the Hon'ble High Court held that restriction imposed in G.R. dated 20.05.2015 is totally unjustifiable and directions were issued to delete the same. The Hon'ble High Court further issued directions for consideration of claim of son for

appointment on compassionate appointment. Following is the operative order of the Hon'ble Bombay High Court, Bench at Aurangabad :-

- "I) We hold that restriction imposed by the Government Resolution dated 20.05.2015 that if name of one legal representative of deceased employee is in the waiting list of persons seeking appointment on compassionate ground, then that person cannot request for substitution of name of another legal representative of that deceased employee, is unjustified and it is directed that it be deleted.*
- II) We hold that the petitioner is entitled for consideration for appointment on compassionate ground with the Zilla Parishad, Parbhani.*
- III) The Respondent No.2 - Chief Executive Officer is directed to include the name of the petitioner in the waiting list of persons seeking appointment on compassionate ground, substituting his name in place of his mother's name.*
- IV) The Respondent No.2-Chief Executive Officer is directed to consider the claim of the petitioner for appointment on compassionate ground on the post commensurate with his qualifications and treating his seniority as per the seniority of his mother.*
- V) Rule is made absolute in the above terms.*
- VI) In the circumstances, the parties to bear their own costs."*

15. In view of above The Government now cannot be permitted to raise the issue of restriction against the consideration in G. R. dated 20.05.2015. Indeed, the Government ought to have taken remedial measures by issuing necessary clarification. However, no such remedial measures are taken.

16. Following the judgment of the Hon'ble High Court in ***Dnyaneshwar Musane's*** case, the Maharashtra Administrative Tribunal bench at Nagpur also issued similar directions for substitution in O.A. No.464/2022, decided on 02.01.2023 (cited supra). The Applicant is also similarly situated person and cannot be denied the benefit of these decisions. Suffice to say, since the issue is no more res-integra in view of the decision of the Hon'ble High Court in ***Dnyaneshwar Musane's*** case, the rejection by communication dated 07.09.2022 is unsustainable in law and liable to be quashed. True, Smt. Sunita did not challenge the communication dated 20.06.2015 whereby her name was deleted from the waiting list on attaining 45 years of age. However, the said order is silent about request made by the Applicant by application dated

20.02.2010 for taking name of her son in her place. Thereafter, the Applicant again made an application on 03.08.2015 i.e. after the Applicant became major upon which the Government called report from S.P. Solapur but matter was kept in cold storage. Ultimately, it is by communication dated 07.09.2022, the claim of son is rejected. This being so, the Applicant has got cause of action on 07.09.2022 to file the O.A.

17. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court in **2018 (4) SLR 771 (Supriya S. Patil Vs. State of Maharashtra)** which is squarely applicable to the present situation. In that case also, the name of widow was empanelled under the compassionate appointment scheme but later it was declined on account of crossing the age. Thereafter, her daughter made an application for substitution of her name in place of widow. The claim was opposed on the ground that the family had already managed to survive for 10 years, and therefore, there was no immediate necessity. The Hon'ble Supreme Court held that only because family had managed to survive 14 years, it cannot be the reason for rejection and whether the family pulled on begging or borrowing should not have been the consideration. In Para No.3, the Hon'ble Supreme Court held as under :-

*“3. We find from the Judgment of the High Court that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. We are afraid that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. We do not propose to deal with the matter any further in the peculiar facts of this case. The widow had already been empaneled for appointment under the Compassionate Appointment Scheme, but was declined the benefit only on account of crossing the age. We are of the view that in the peculiar facts of this case, her daughter should be considered for compassionate appointment. Ordered accordingly.”*

18. The totality of the aforesaid discussion leads me to conclude that rejection of claim of the Applicant is totally arbitrary and indefiance of the decision of the Hon'ble Supreme Court rendered in **Dnyaneshwar**

**Musane's** case. The O.A., therefore, deserves to be allowed. Hence, the following order:-

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned communication dated 07.09.2022 is hereby quashed and set aside.
- (C) The Respondents are directed to enroll the name of the Applicant in the waiting list within two months from today and thereafter the Respondents shall take necessary steps for providing appointment on compassionate ground as per his eligibility and suitability in terms of the scheme.
- (D) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Place : Mumbai

Date : 15.06.2023

Dictation taken by : Vaishali S. Mane

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